

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

)
) Civil Action No.
) 5:16-cv-10444-JEL
In re: FLINT WATER CASES)
)
) Hon. Judith E. Levy
)
_____)

HIGHLY CONFIDENTIAL
Wednesday, May 10, 2023

Remote videotaped deposition of
LARRY L. RUSSELL, Ph.D., commencing at 8:32 a.m., on
the above date before Carol A. Kirk, Registered Merit
Reporter, Certified Shorthand Reporter, and Notary
Public.

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1 there are a number of municipalities around the
2 country that have levels of 6 parts per billion
3 for their 90th percentile as a result of lead
4 and copper testing?

5 MR. STERN: Objection; form,
6 vague.

7 A. Are you stating that those samples
8 were collected in accordance with the Lead and
9 Copper Rule guidelines for what houses should be
10 sampled?

11 Q. Sure.

12 A. Okay. With that caveat, yes, I'm
13 aware of some that have those numbers. My
14 position is the same. It's still too high.

15 Q. Okay. Let's turn to page 14 of
16 your rebuttal report, Dr. Russell.

17 You talk about the standard of
18 care on this page, and you state in part -- if
19 you look at the first bullet there toward the
20 bottom of page 14 that "VNA failed to identify
21 the enormous risk to human health and property."

22 Do you see that?

23 A. Yes, sir.

24 Q. What is the basis for that

1 opinion?

2 A. A review of the information
3 provided internally and externally by Veolia.

4 Q. What was the enormous risk?

5 A. Well, as stated there clearly,
6 I believe, there are two. It is a real issue
7 with human health to intake water that contains
8 excessive amounts of lead.

9 And with respect to the property,
10 it is -- the issue there is the corrosion of the
11 piping materials in the user's businesses and
12 homes in Flint.

13 Q. Okay. Thank you for that.

14 Dr. Russell, you're familiar with
15 the Safe Drinking Water Act, correct?

16 A. Yes.

17 Q. Dr. Russell, in your experience,
18 do water treatment professionals use the Safe
19 Drinking Water Act to evaluate whether or not
20 water is safe to drink?

21 A. Sort of. I mean, I wouldn't put
22 it in those terms.

23 Q. From a regulatory standpoint,
24 Dr. Russell, would you agree that water that

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1 A. Where are you now?

2 Q. Sure. If you drop down to --
3 still under the bold 3, if you drop down to b.

4 A. Yes, sir.

5 Q. Do you see what I read a minute
6 ago?

7 A. Yes. Okay.

8 Q. Okay. Taking Canon 3 and 3b in
9 mind, Dr. Russell, what basis do you believe VNA
10 had in February or March of 2015 to warn the
11 public in the City of Flint with respect to
12 lead?

13 A. As I recall, during this period of
14 time, there were numerous internal e-mails
15 inside of VNA discussing the fact that the only
16 safe approach here was to return the water
17 system to the Detroit Water.

18 So internally they knew the
19 answer, and they knew the concerns, and they
20 were concerned about lead, and they didn't
21 express that in their reports or in their public
22 presentations.

23 Q. So it's your testimony that VNA
24 should have told the public that the City of

1 Flint should have returned to Detroit?

2 Is that what you're saying?

3 MR. CONNORS: Objection;

4 mischaracterizes his testimony.

5 A. Among other things. Clearly, as
6 we're sitting here, we're all aware that the --
7 what solved the Flint water crisis was switching
8 back to Detroit Water.

9 So Veolia knew the answer when
10 they were on the job, and they discussed it
11 internally, but they failed to take any motions
12 or actions to move the client forward to that
13 solution.

14 Q. And did I hear you say a minute
15 ago, Dr. Russell, that there was some
16 information with respect to lead that you
17 believe VNA was under an obligation to tell the
18 public about in February or March of 2015?

19 A. I didn't say that.

20 Q. Okay. All right. So you agree
21 that as of February, March 2015, there was not
22 information known to VNA that gave rise to a
23 duty to inform the public about concerns with
24 lead, correct?

1 MR. CONNORS: Objection;
2 mischaracterizes testimony, and object
3 to form.

4 A. What I said was that there is
5 ample internal discussion at Veolia about
6 exactly the issues we're talking about. And
7 their internal discussions indicate that they
8 have concerns about lead and that they are aware
9 that the proper solution to this problem is to
10 switch back to the Detroit water.

11 Q. Okay. So just so I'm clear,
12 Dr. Russell, are you testifying that VNA had an
13 obligation in 2015 to tell the public about lead
14 concerns?

15 A. That's a very interesting
16 question.

17 The canon that you don't mention
18 here is the first one, which says that
19 "Engineers are obligated to protect the public
20 first."

21 And clearly the discussion within
22 Veolia is that there are serious water quality
23 concerns in Flint. And the issue of making them
24 public is a little more complicated, but the

1 And I thought you testified when
2 I asked you what this means that just doing your
3 job as an engineer doesn't mean you've met the
4 standard of care.

5 Did I misunderstand what you said?

6 A. Yes. What I said was this: What
7 I said was that just meeting the letter of your
8 contract does not mean that you met the State of
9 Michigan definition of achieving the standard of
10 care for a professional engineer. That's what
11 this statement is about.

12 Q. Okay. So can you tell me in what
13 ways Veolia did not -- well, can you tell me --
14 the first part of this here, does not connote
15 quality as a professional ...

16 A. I'm sorry?

17 Q. Yeah. I'm sorry. I haven't asked
18 the question yet.

19 So your point is that even though
20 VNA may have satisfied their contract with the
21 city, they still did not satisfy the standard of
22 care; is that right?

23 MR. CONNORS: Objection; assumes
24 facts not in evidence and misstates the

1 testimony. It's vague and ambiguous and
2 purposely confusing.

3 You can answer if you understand.

4 A. What I'm saying is that
5 Dr. Bellamy's position is that Veolia satisfied
6 the terms of their contract; therefore, they
7 operated in a manner which allowed them to meet
8 the standard of care.

9 What I'm saying is it's a
10 criticism of that position saying that just
11 doing the work doesn't mean that you've met the
12 standard of care.

13 And the problem here is one of
14 what Veolia is saying internally versus what
15 Veolia is saying externally. They had an
16 obligation to alert the public that lead was a
17 concern.

18 Their e-mails are full of this
19 discussion about lead and what the water quality
20 issues are, and yet they're silent. Their
21 reports are silent on the subject.

22 There's even an edited copy of the
23 report where the lead discussion is taken out of
24 the report. You know, that's the part I'm